HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1281 (S/S) of 2003

Devanand Thapa S/o Sri L.B. Thapa

Versus

Union of India and others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 22.10.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1281 of 2003 (SS)

Devanand Thapa son of Sri. L.B. Thapa
No.1550000 P Hav HQCE (P) Sewak
C/o 00 APO ……. Petitioner

Versus

1. Union of India
2. 1642 Pioneer Coy (GREF)
   C/o 99 APO, Kohima (Nagaland)
3. Bombay Engineer Group & Centre
   PAORS Kirkee, Pune.
4. HQ CE (P) Sewak
   GREF C/o 99 APO ……. Respondents

Sri Sayed Nadim, Advocate for the petitioner
Standing Counsel (Central Govt.)for the respondents.

Dated: October 22, 2003

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties at length.

The present writ petition has been filed praying for a writ order or direction in the nature of mandamus directing the respondents to release the arrears of T.A. & D.A. for the temporary duty performed by the petitioner outside of India.

Brief facts giving rise to the present writ petition are that the petitioner was previously deputed at the Depot Battalion Group MTBEG Centre Kirkee, Pune. He was sent on deputation at Kohima

on 16.3.1994 and he joined at 1642 Pioneer Company GREF at Nagaland. The petitioner was deputed on temporary duty for short period to Myanmar from the Pioneer Company on 26.9.1997. There is a specific rule for the payment of the persons who will perform duty outside of India. The rate for temporary duty was 75% or 60 dollars every day. Conversion rate of Dollar at the relevant time was Rs.42.38 and as such daily payment comes to Rs.1907.10 per day. The petitioner was engaged with one Brigadier V.K. Manchanda and Brigadier P.K. Kapoor who were the Chief Engineers. They also claimed T.A. & D.,A. according to rule and got their T.A. & D.A. within the stipulated time but the petitioner was not given his T.A. & D.,A. till date according to the terms and conditions.

The petitioner has further alleged that he has moved a representation to the Headquarter for payment of the arrears of his D.A. regarding his visit of Mayanmar but neither his representation has been decided nor the amount has been paid to him by the Department.

The petitioner has further stated that in reply to the letter dated 26.7.2002 of P.A.O. (ORS) Beg. Kirkee Pune -3 the petitioner has sent required documents which were related to the temporary duty of the petitioner to Myanmar but still no arrear of D.A. has been paid to the petitioner.

It may be observed at this stage that payment of T.A. and D.A. to the petitioner for his services rendered by him in pursuance of his official duty is a party of Article 21 of the Constitution of India, which reads as under:

21. Protection of life and personal liberty- *No person shall be deprived of his life or personal liberty except according to procedure established by law.*

In the case Islamic Academy of Education vs. State of Karnataka (2003) 6 SCC 697 the Apex Court has relied upon the judgment in Kapilo Hingorani vs. State of Bihar 2003) 6 SCC 1: JT (2003) 5 SC 1 and Munn vs. Illinois 94 US 113: 24 L Ed 77 (1877) and has observed human condition in the light of Article 21 of the Constitution of India. The observations of the Apex Court are quote below:

" Recently in Kapila Hingorani vs. State of Bihar (supra) a Bench of this Court noticed the following observations of Field J. in Munn v. Illinois as to what is life, which was in the following terms:

Something morel than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed."

Respondents are, therefore, directed to decide the representation of the petitioner in accordance with rules and regulations applicable to

the Armed forces within a period of six weeks after the receipt of the certified copy of this order.

The writ petition is disposed of accordingly. No order as to costs.

22.10.2003 **(Rajesh Tandon, J.)**
*Dhyani